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C O N F I D E N T I A L SECTION 01 OF 02 LUSAKA 001094

SIPDIS

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SUBJECT: PROSPECTS FOR SATA'S ELECTION PETITION

REF: LUSAKA 1065

Classified By: Ambassador Donald Booth for Reasons 1.4(b) and (d)

11. (C) Summary. Soured at losing the presidential race, Patriotic Front (PF) leader Michael Sata intends to petition the election results, calling for recounts in as many as 80 constituencies. He has delayed submitting his petition as he awaits the results of the Electoral Commission's verification exercise -- a final accounting of the ballot papers. Sata's alleged assault of Movement for Multiparty Democracy (MMD) cadres during the verification process has delayed the exercise and blemished what has otherwise been a peaceful process. PF has until November 16 to petition the results, according to the Zambian Constitution. One of the Zambian Government's most senior lawyers estimates Sata's chances for success in changing the result of the election at "nil." End Summary.

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PF Planning Its Petition  
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12. (C) Emboffs met with PF Secretary General Edward Mumbi on November 6 to discuss his party's intended petition of the election results. Mumbi said PF is waiting for the Electoral Commission of Zambia (ECZ) to conclude its verification exercise, which is a final reconciliation of ballot papers to ensure that used (cast, spoiled, and rejected) and unused ballots correspond with the ECZ's ballot issuance. Following the verification process, Mumbi said the party intends to file its petition with the High Court, calling for recounts in as many as 80 of Zambia's 150 constituencies. Although Mumbi acknowledged that the litigation could be lengthy and fruitless, describing it as a possible "academic exercise," he seemed confident that a recount would expose blatant electoral fraud in rural areas.

13. (C) Mumbi claimed that electoral officials had rigged the results in areas where PF polling agents were not present, including in many district centers that collected and transmitted constituency results. He showed emboffs his case notes, which consisted primarily of annotations concerning either the absence of a polling agent or the PF's inability to verify the identity of a polling agent. He could not provide detailed examples of rigging. PF spokesperson Given Lubinda told Emboff on November 3 that the party had identified "problematic" constituencies based on where the party felt it had performed below expectation. Presumably this dearth of evidence accounts for the party's delay in submitting its petition and its interest in following the progress of the ECZ's verification exercise. Although Mumbi has been loath to admit PF's broad coverage on October 30, the Foundation for Democratic Process, which conducted a parallel vote tabulation, estimated that PF polling agents were present at 85 percent of the polling stations.

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Sata Assaults MMD Cadres  
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¶4. (SBU) Regrettably, the ECZ's results management inefficiencies (reftel) are carrying over into the verification process itself. These problems appear to stem from a lack of training and guidance as to how this process should be conducted. In the meantime, frequent ineptitude -- of electoral officials and party representatives alike -- is resulting in some confusion, tension, and additional accusations of electoral fraud. During Emboffs' meeting with Mumbi, PF agents attending the verification exercise in Mongu in western Zambia called Mumbi to tell him that electoral officials were unable reconcile ballot serial numbers and were attempting to "chase them out" of the district center where the verification process was taking place. Mumbi also received calls from PF representatives in Chongwe (East of Lusaka) who reported that the seals on all the ballot boxes at the district center had been broken and the ballots had been compromised.

¶5. (SBU) These pressures culminated in a skirmish between Sata and MMD cadres at a verification exercise in Lusaka on November 6, when Sata allegedly insulted an MMD official and then physically assaulted an MMD ward chairperson who had tried to move a ballot box. According to press reports, a "free-for-all punch up then erupted." Although the police are investigating the report, they have not arrested or questioned Sata for his alleged assault of the MMD cadres. The ECZ, however, has postponed Lusaka's verification exercise, a move that PF spokesperson Lubinda hailed as prudent, saying the task should be carried out when people are "sober" and "tempers are at their best."

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Petition Prospects Slim  
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¶6. (C) According to the Solicitor General, Dominic Sichinga, the Zambian Government is preparing to receive PF's petition and is surprised at PF's delay in submitting it. Sichinga gauged PF's chances of succeeding in changing the result of the election at "nil," underscoring that the United Party for National Development's petition of the 2001 presidential results lasted many years and bore no results. Sichinga also emphasized that the ECZ's verification exercise is independent of PF's petition. He said that the petition will not encumber President Banda because, according to Zambian law, a sworn-in president is considered legally and lawfully elected until proven otherwise. (Note: Some argue that this may have been the motivation for holding Banda's swearing in ceremony within three hours of the ECZ's declaration of election results. End Note.)

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Comment  
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¶7. (C) Sichinga may not be far off in his estimation of PF's chances for succeeding, particularly as PF does not appear to have much evidence to substantiate its claims. Its petition is inherently weak, in that it is based on what polling agents -- by their absence -- did not witness. Lubinda said that the recount, what he described as "pure arithmetic," will speak for itself. The High Court, however, may be hard pressed to approve recounts in 80 constituencies without concrete, compelling evidence. It is encouraging that Sata, albeit with poor sportsmanship, is challenging the election through legal means rather than outright violence. On the other hand, Sata's devotees, who are unfamiliar with the petition, are unlikely to view a (likely) legal defeat as anything more than MMD corruption and a miscarriage of justice.

BOOTH